

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARTIN SANDOZ,

Plaintiff,

-against-

THE CITY OF NEW YORK, COMMISSIONER OF NEW
YORK CITY DEPARTMENT OF CORRECTIONS
CYNTHIA BRANN, JOHN DOE 1, JOHN DOE 2,

**DEFENDANTS'
STATEMENT PURSUANT
TO LOCAL RULE 56.1**

17-CV-5447 (VSB) (SN)

Defendants.

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Defendants City of New York and Department of Correction (“DOC”) Commissioner Cynthia Brann (“defendants”) submit this statement pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York to set forth the material facts as to which defendants contend there are no genuine issues to be tried.

1. On March 20, 2016, the date of the alleged incident, plaintiff Martin Sandoz was incarcerated Anna M. Kross Center (“AMKC”) on Rikers Island, New York. (M. Sandoz Deposition Transcript at 20:5-6; 22:11-25, annexed to the Declaration of Adria Bonillas, dated June 17, 2019 (“Bonillas Decl.”) as Exhibit G; Complaint, Docket Entry No. 2.)

2. Plaintiff was housed in “Quad Lower 11” in March of 2016, which has a common area where inmates can engage in recreational activities such as playing cards and watching television. (M. Sandoz Deposition Transcript, at 23:18-19; 25:9-15, Bonillas Decl., Ex. G.)

3. On March 20, 2016, the date of the alleged incident, at approximately 8:30 p.m., plaintiff left his cell and walked to the common area to get some water and watch a movie playing on the television. (Id. at 25:9-17.)

4. Plaintiff was watching the movie when an unknown inmate (“the inmate”) approached him from behind and began attacking him. (Id. at 25: 9-17.)

5. The attack was short, and lasted approximately one to one and a half minutes. (Id. at 29-30:25-1.)

6. After the alleged attack, plaintiff returned back to his cell without informing any correction staff that he had been attacked. (Id. at 38-39:20-4; Complaint, Docket Entry No. 2.)

7. At the time of the alleged attack, plaintiff did not know the inmate by name. (Plaintiff’s Signed Voluntary Statement, dated April 15, 2016, Bonillas Decl., Ex. B.; M. Sandoz Deposition Transcript at 32:17-23, Bonillas Decl., Ex. G.)

8. Plaintiff does not know why the inmate attacked him. (M. Sandoz Deposition Transcript at 32:10-12, Bonillas Decl., Ex. G.)

9. Plaintiff never had any prior altercations with the inmate before the alleged attack. (Id. at 32:10-16.)

10. Plaintiff did not report the alleged attack to any correction staff until approximately three weeks to one month later. (Id. at 56:23-25; 57:1-5.)

11. Plaintiff never told any correction staff before the attack that he was afraid of any inmates. (Id. at 64:15-17.)

12. The first time plaintiff ever reported the alleged attack was approximately three weeks later during a general sick call. (Id. at 56-57:23-25, 1.)

13. An investigation was conducted to attempt to find the inmate who attacked plaintiff, during which time plaintiff informed DOC that it was an isolated attack by an unknown inmate, and that he has not had problems with the inmate since. (Plaintiff's Signed Voluntary Statement, dated April 21, 2016, Bonillas Decl., Ex. C; Plaintiff's Signed Voluntary Statement, dated April 15, 2016, Bonillas Decl., Ex. B; Incident Report Form, Bonillas Decl., Ex. A.)

14. Plaintiff was removed from general custody and placed into protective custody after the alleged incident in order to ensure his safety. (M. Sandoz Deposition Transcript at 13:7-10, Bonillas Decl., Ex. G; Placement Into Protective Custody Form dated April 21, 2016, Bonillas Decl., Ex. D.)

15. Commissioner Brann was not present for the alleged incident, as she was not made Commissioner of the Department of Correction until October of 2017, almost two years after the alleged incident. ("Leadership at DOC" public webpage, Bonillas Decl., Ex. E.)

16. Plaintiff has not made any specific allegations against Commissioner Brann. (Complaint, Docket Entry No. 2.)

17. Plaintiff did not file a grievance related to this incident, as required under the New York City Department of Correction's grievance program. (Plaintiff's Grievance History, Bonillas Decl., Ex. F.)

Dated: New York, New York
June 17, 2019

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By: _____ /s/
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TO: **VIA FIRST CLASS MAIL**
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